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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES,

Petitioner,

vs.

THE STATE OF WASHINGTON,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE PETITIONER

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Opinions Below

The opinion of the Supreme Court of the State of Washington is reported in 58 Wn. 2d 716, 364 P. 2d 935 (1961), and was filed September 14, 1961. It is in the record (R. 139-168). Five judges joined in affirming the trial court (R. 139-148). Four judges dissented in three opinions (R. 149-168).

Jurisdiction

The opinion of the Supreme Court of the State of Washington which is sought to be reviewed was filed September 14, 1961. A petition for rehearing was denied November

8, 1961 (R. 169). The judgment was entered November 10, 1961 (R. 170). The Petition for Certiorari was filed February 8, 1962. On November 9, 1961, an order was entered granting a Stay of Execution and Enforcement of Judgment for a period of ninety days to allow this Petition (R. 169-170).

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(3), since the rights, privileges and immunities specially established by the Fourteenth Amendment to the Constitution of the United States have been denied.

Question Presented

Was there a denial of due process of law, as required by the Fourteenth Amendment of the United States Constitution in a criminal proceeding where a confession of the accused was admitted in evidence and:

(1) The confession was signed after several hours of interrogation, and approximately 19 hours of incommunicado detention of petitioner, during which time petitioner repeatedly requested the right to consult an attorney and to call his wife, and during which time he was told by police that he could not call his wife until he was booked and that he could call an attorney only if he cooperated and signed a confession.

(2) It is established police practice to deny any communication with the outside world to a person arrested while he is "booked for investigation" or "booked on an open charge" until the investigation has been concluded.

(3) The petitioner was kept incommunicado for a total period of 5 to 7 days, despite requests that he be allowed telephone calls.

The judgment of the Supreme Court of the State of Washington was that the admission of the confession evidence did not deprive petitioner of the due process of law required by the Fourteenth Amendment to the Constitution of the United States.

Constitutional Provisions and Statute Involved

Amendment XIV to United States Constitution:

"... nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Revised Code of Washington, Section 9.33.020(5):

"No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statements or a confession. Any person violating the provision of this section shall be guilty of a misdemeanor." Laws of 1909, C. 249, §359.

STATEMENT OF THE CASE

Facts

On the evening of December 19, 1957, a service station in the City of Spokane, Washington, was robbed by two men at approximately 9:05 o'clock P.M. (R. 32-33). At 9:15 o'clock P.M., petitioner's brother, Keith Haynes, was arrested by an officer of the Spokane Police Department

in an area adjacent to the service station. At 9:30 o'clock P.M., the petitioner was arrested by another police officer approximately five blocks away from the service station (R. 40). Petitioner had consumed a substantial quantity of beer and was emotional and crying after arrest (R. 49-50, 105). A policeman testified that on the way to the police station, petitioner admitted the robbery (R. 41). At the police station, the brothers were booked for investigation, which is known to the Police Department of Spokane as being placed on the "small book". This by local practice means that no phone calls whatsoever and no visitors are allowed to prisoners (R. 56-57, 67, 69). He was questioned by two police officers who pressed him for a statement of guilt. He asked several times for permission to phone a lawyer (R. 97, 105), but he was told that only if he "cooperated" and made a statement could he phone (R. 97). When he asked permission to phone his wife, he was given the same answers (R. 99-100, 105, 107). He was not allowed to phone that night or the next day, Friday, when he was interrogated by police detectives for approximately one and a half to two hours (R. 69). When he again repeatedly asked to call his wife, he was refused (R. 88, 99-100) and was again told that if he "cooperated" and made a statement, he could be booked on a specific charge and then could call his wife (R. 100). Early in his interrogation, he asked "Can't I talk to the prosecutor before I go any further with this statement?" To this the detective replied, "We just want to get this down for our records, and then we will go to the prosecutor's office and he will ask the same questions that I am" (R. 85, 136). He thereupon dictated a statement admitting his participation in the robbery. A portion of this statement is quoted:

> "Q. After it is typed up, will you be willing to sign it as the truth after it has been read by you? A. Yes.

Q. Have we made you any threats or promises? A. No.

Q. Has any police officers made you any promises or threats? A. No—except that the Lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation—you haven't been booked yet. When you are, you will be able to phone your wife" (R. 87-88, 138).

He was taken to the office of the County Prosecutor where he was again asked to make another statement (R. 100). He did so, but again refused to sign it, because he had not been allowed to call his wife to see about a lawyer (R. 101, 107). He was again promised that he would subsequently be allowed to call. He then signed the stenographic transcript of the statement previously made at the City Jail, which is Exhibit 6 herein, but refused to sign the new one (R. 101). He still was not allowed to make a telephone call (R. 100). He was then taken for his preliminary hearing before a magistrate at approximately 4:00 o'clock P.M. on the day after arrest.

He was charged with robbery, bound over, and transferred to the County Jail where he was confined until either the following Tuesday or Thursday, December 24 or December 26, when he was returned to the Prosecutor's Office and again asked to sign the statement previously made there. He again refused on the ground that the promises of the police that he be allowed to phone his wife had not been fulfilled (R. 101). At this time, either on December 24 or December 26, five or seven days after his arrest, the petitioner was for the first time allowed to telephone his wife (R. 101).

At no time, from his arrest on December 19 until either December 24 or December 26, was petitioner allowed to

communicate with anyone outside, despite his repeated requests to be allowed to do so. Petitioner's wife had telephoned the City Jail around noon on the day after the robbery. She was refused any information, except the fact that petitioner was being held, and was referred to the "morning paper" for information (R. 131).

At the trial, the police officers admitted that, until the confession had been signed, petitioner was confined "under the small book" which prohibited all visitors and precluded communication with the outside world (R. 56-57, 67, 69).

Trial and Appeal

On February 20, 1958, an Information was filed in the Superior Court for Spokane County charging petitioner, Raymond L. Haynes, and his brother, Keith E. Haynes, with the crime of robbery (R. 1). A jury trial was had, beginning March 19, 1958, in Superior Court for Spokane County, finishing on March 21, 1958, with a verdict of guilty. Upon the trial at the time, the State offered plaintiff's Exhibit 6, the purported confession of petitioner, Raymond L. Haynes. Objections were made to the admission of this exhibit upon the ground that it violated the constitutional rights of the defendant with respect to self-incrimination and forced defendant to offer evidence against himself (R. 79). The objection was overruled, and the exhibit was admitted in evidence (R. 80). At the close of the evidence, and after instruction, a guilty verdict was returned (R. 21). Thereafter, on March 24, 1958, motions for new trial and arrest of judgment were filed, and after argument, were denied on March 28, 1958 (R. 22). On May 19, 1958, petitioner, Raymond L. Haynes, was sentenced to Washington State Penitentiary for not more than twenty years (R. 24-25). On the same date, May 19, 1958, the

petitioner filed and served his notice of appeal to the Supreme Court of the State of Washington from the judgment, sentence, and commitment (R. 26).

Upon appeal the State argued that the objections made to prevent the confession from being considered by the jury did not specifically raise the question of whether the confession was made voluntarily. The State Supreme Court held that this issue had been sufficiently raised to place this question before the trial court and that therefore it had been properly preserved for consideration on appeal (R. 140). The court went on to say that the circumstances under which the confession was obtained were within the restrictive limits of the Fourteenth Amendment to the United States Constitution. As to the police denial of permission to call an attorney, the court held that the absence of counsel during this pre-trial period did not so prejudice the petitioner "as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.'" The court affirmed the judgment of the trial court. Four of the nine judges dissented on the ground that the confession should not have been admitted in evidence.

ARGUMENT

I.

Uncontroverted Facts.

Since this Court accepts as final the findings of the State Court unless they are in conflict with uncontested evidence, it is necessary to go into some detail as to the evidence relating to the circumstances surrounding the signing of the confession. At least four police officers and one deputy prosecuting attorney dealt with petitioner from the time

of his incarceration until after the confession had been signed.

Officer Pike who was in the police detective office with petitioner and in the next room when the line-up took place (R. 51).

Lieutenant Wakely, a detective who interrogated petitioner the evening of the robbery (R. 52-53).

Officers Cockburn and Peck, who interrogated the petitioner the next morning (R. 62-63).

Mr. Carroll D. Gray, deputy prosecutor for Spokane County who interrogated petitioner early the next afternoon (R. 75-77, 100, 108).

Lieutenant Wakely, and later Officer Cockburn, both called by the prosecution, testified that while a prisoner is in the City Jail being interrogated, he is booked on an "open charge" or in plain language, held without charge for investigation (R. 56-57, 69). This is called by police officials as being booked on the "Small Book" (R. 56). They further testified that while a person is on the "Small Book", he may make no telephone calls and may receive no visitors (R. 56-57, 69). In other words, it is the set rule in Spokane that while a prisoner is under investigation, he is kept totally incommunicado.

Petitioner was kept under the "Small Book" from 9:20 o'clock P.M. until approximately 4:00 o'clock P.M. the next day when after signing a confession, he was taken before a magistrate and charged with robbery. His testimony as to events during the evening of his arrest was as follows (R. 96-97):

"Q. You say you remember talking to these two officers. What do you mean by that? A. Well, I really didn't mean anything, just that—well,—

Q. Were they interrogating you? A. I hadn't got that far yet.

Q. Just go ahead. A. I just found myself in the interrogation room.

Q. All right. A. They kept wanting me to own up to robbing a Richfield Service Station and I asked Mr. Pike several times if I could call a lawyer and he said if I cooperated and gave him a statement—I cannot testify as to his exact words he used—I can only testify to general conversations.

Q. All right. A. After I made a statement—I don't remember at that time him specifying that if I signed it or not—that I would be allowed to call, to make a phone call, and I decided I didn't want to call an attorney because I didn't know an attorney that I figured was qualified and I didn't know if the police department had notified my wife at my residence and I didn't know if she had made any arrangements to contact me an attorney."

Later in his testimony regarding the interrogation on the morning after his arrest, he testified as follows (R. 99-100):

"Q. Did the officers at that time, state whether or not the officers at that time asked you to give them a statement. A. Yes.

Q. And what was your answer to that? A. I wanted to call my wife.

Q. And were you allowed to call your wife? A. No.

Q. This was on Saturday? Strike that. This was on Friday? A. Friday.

Q. December 20th? A. Yes.

Q. And was anything else said with respect to making a telephone call? A. Mr. Pike and the other offi-

cer both told me that when I had made a statement and cooperated with them that they would see to it that as soon as I got booked I could call my wife.

Q. Well, that was the night before you were told that, wasn't it? A. I was told that the next day, too, several times.

Q. Who were the officers that were with you? A. Oh, not Mr. Pike. Mr. Cockburn and Mr. Peck, I believe."

Even the confession, Exhibit 6, taken in shorthand by a police stenographer, typed by her, notarized by the deputy prosecutor and witnessed by Officer Cockburn, contains the following colloquy with the petitioner (R. 138):

"Q. After it is typed up, will you be willing to sign it as the truth after it has been ready by you? A. Yes.

Q. Have we made you any threats or promises? A. No.

Q. Has any police officers made you any promises or threats? A. No—except that the Lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation—you haven't been booked yet. When you are, you will be able to phone your wife."

In the face of petitioner's testimony of repeated requests to four policemen for permission to phone an attorney or his wife, the prosecution introduced no rebuttal testimony. In the prosecution's case in chief, Officer Peck did not testify. Officer Pike had testified but was asked nothing about petitioner's requests to phone an attorney or his wife. Lieutenant Wakely on cross-examination had testified (R. 56):

"Q. Did he ask permission to make a phone call himself to his wife? A. He may have. I don't remember exactly whether he asked or whether we wouldn't notify his wife."

Officer Cockburn, an interrogator on the morning after the arrest, testified (R. 68):

"Q. Now at 9:30 in the morning of December 20th, was the first time you had occasion to talk to Raymond Haynes? A. To my best recollection, that was the first time I ever saw him.

Q. During that conversation, Officer, did he ask permission from you to make a telephone call to his wife? A. I don't remember him asking me.

Q. Could he have asked permission to make a telephone call? A. He could have.

Q. You just don't remember? A. I don't remember him asking me.

Q. While you were interrogating the defendant, Raymond Haynes, did he make a statement to you in substance and effect that he would make a statement or would tell you what you wanted to know if you would let him make a phone call to his wife? A. I don't remember.

Q. At the time you were interrogating the defendant, Raymond Haynes, did you make a statement to him; in effect, that you can't make a phone call until we get a statement? A. I don't remember making any such statement."

Cockburn's answer quoted above is the only State's evidence touching petitioner's testimony that the police conditioned permission to make a phone call on the making of a signed confession. It is not a denial of such a condition but only that he did not remember making such a statement.

This cannot, moreover, be interpreted as a denial of petitioner's positive testimony that other members of the police department did impose this condition. It should be borne in mind that Cockburn was present when Exhibit 6 was dictated and later when he, Cockburn, signed Exhibit 6 as a witness. It must be assumed that he heard Lieutenant Wakeley deny petitioner the right to phone until after the "investigation" had been completed when he would be booked. Yet he testified that he did not remember any request to call his wife.

In the face of this strong testimony, the sole testimony of Officer Cockburn that he did not remember petitioner making such request although "he could have" is not sufficient to contradict petitioner's testimony that he was told that only after he signed a confession could he make a phone call. This is particularly true in the light of the "Small Book" rules of the Police Department.

It is also noteworthy that, when before Deputy Prosecutor Gray to sign the statement given to the police, petitioner gave a second statement which was taken down by a stenographer. When he was asked to sign this he refused and asked permission to call his wife (R. 100). He further testifies (R. 101):

> "I told him all the promises of all the officers I had talked to had not been fulfilled, and I had not been able to call my wife and I would sign nothing under any conditions until I was allowed to call my wife to see about legal counsel" (R. 101).

Mr. Gray, although a witness in the case in chief, was not called to refute this testimony. Thereafter petitioner was not allowed to make a telephone call until 5 or 7 days after his arrest.

It is submitted that the record shows the following incidents as unchallenged:

(1) That petitioner repeatedly asked at least four policemen for permission to call (a) an attorney, and (b) his wife.

(2) That permission was continually refused, in accordance with set police policy regarding a man being held for investigation.

(3) That at least some policemen told petitioner that he could not call his wife or an attorney until he "cooperated" and gave a statement.

(4) That in fact he was not allowed to make a phone call until either five or seven days after his arrest, when there remained a typed confession which petitioner refused to sign.

(5) That at the trial, Officer Cockburn testified merely that he could not remember petitioner making a request to call his wife, although he admittedly was present during the dictation of Exhibit 6, which contains a reference to petitioner's earlier request to phone his wife.

(6) That petitioner, before dictating the implicating portions of Exhibit 6, requested to talk to the Prosecuting Attorney before going any further with the statement. The police denied this request until after "we get this down for our records."

(7) The record fails to show any advice to petitioner as to his right to remain silent or any caution that what he said might be used against him.

The opinion of the court below, while making no findings either way, stresses that the State does not concede that permission to call his wife or an attorney was conditioned on his signing the confession (R. 143). This may not have

been conceded by the State's attorney in argument to the court below, but no evidence whatsoever was introduced by the State contradicting petitioner's explicit testimony in this regard. His testimony, not only stands uncontradicted but is strongly supported by the testimony of the State's witnesses and by the State's Exhibit 6.

As this Court stated in *Gallegos* v. *Nebraska*, 342 U. S. 55, 96 L. ed. 86, 72 S. Ct. 141 (1951) at page 61:

> "The state's ultimate conclusion on guilt is examined by due process standpoint in the light of facts undisputed by the state. That means not only admitted facts but also those that can be classified from the record as without substantial challenge."

II.

Due Process of Law Is Denied by the Admission Into Evidence of a "Confession" Obtained Under These Circumstances.

This Court has decided numerous cases in which it has been held that denial of the right to counsel can under certain circumstances constitute a deprivation of procedural due process. *Tomkins* v. *Missouri*, 323 U. S. 485, 89 L. ed. 407 (1945); *Williams* v. *Kaiser*, 323 U. S. 471, 89 L. ed. 398 (1945); *Powell* v. *Alabama*, 287 U. S. 45, 77 L. ed. 158 (1932). The right to counsel, if it is to be meaningful must mean not only a right to counsel at the time of trial but also the right to communicate with counsel from the moment of arrest. Immediately after arrest, a suspect's rights are in substantially greater jeopardy than at the time of trial when he is surrounded by the safeguards inherent in a court proceeding. When he is first arrested, he is subject to the psychological pressures necessarily arising from the fact of being arrested, that is, being forcibly in the hands and

under the control of an organization stronger and with greater resources by far than the suspect. This creates a pressure, necessarily and properly, but a pressure nonetheless to acquiesce in the demands of his captors. It is at that time that an attorney is a necessity, if a suspect's constitutional rights are to be given any meaningful protection. Then an attorney can not only advise him and assure him of his rights and duties, but, not being himself under arrest, he can take whatever action is necessary to prevent an infringement of such rights. Without an attorney the arrested man is subject to whatever pressures the police wish to impose. As was stated in *Powell* v. *Alabama*, 287 U. S. 45, 77 L. ed. 158 (1932):

> "He requires the guiding hand of counsel at every step in the proceedings against him."

We are not here concerned with the duty of the state to supply counsel for indigent persons, as to which there is only a qualified right, *Betts* v. *Brady*, 316 U. S. 455, 86 L. ed. 1595 (1942), but with the right of a prisoner to consult with counsel of his own choosing. *Chandler* v. *Fretag*, 348 U. S. 3, 99 L. ed. 4, 75 S. Ct. 1 (1954). In that case this Court stated:

> "Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his counsel was unqualified" (p. 9).

A necessary corollary is that he be allowed to consult with counsel of his choice at such time as *he* feels he needs to—in the instant case, shortly after his arrest.

Petitioner asked to phone an attorney and then later, thinking that his wife might have retained an attorney, he requested to phone his wife. The police, following the established practice in Spokane, told him that after he

had made a statement and been arraigned, he could call his wife. The petitioner's desire to get away from the police and to someone who might get him an attorney is shown by his remark recorded in Exhibit 6:

> "Q. Then, what happened? A. Can't I talk to the Prosecutor before I go any further with this statement" (R. 85, 136).

And it is interesting to note the police answer to this:

> "Q. We just want to get this down for our records, and then we will go to the prosecutor's office and he will ask the same questions that I am."

In other words, "There is no point in your seeing the prosecuting attorney, he will ask you the same questions as we are."

By means of the carrot of the promise that he could call his wife, and the stick of being kept incommunicado, petitioner was induced to dictate and sign Exhibit 6. Exhibit 6 is the fruit of Spokane's illegal but effective policy of "Small Book" procedure. This procedure violates the Constitution of the United States and specifically violates a statute of Washington. R. C. W. 9.33.020(5) makes it a misdemeanor for police, having custody of a person under arrest, to "refuse permission to such arrested person to communicate with his friends or with an attorney," when such refusal has the purpose of extorting a confession. Violation of this statute is exactly what the Spokane policy "Small Book" policy requires of the arresting officer, to refuse access to friends or an attorney until the investigation is completed. This is an indication of the determination of the police department to extract a confession, come what may. After completion of the investigation, there is little benefit that can be afforded by counsel, if the prose-

cution can introduce in evidence the fruits of the police illegality.

It must be realistically assumed, at least in the absence of evidence to the contrary, that had petitioner been allowed to call an attorney, Exhibit 6 would never have been dictated or signed. It is not difficult to determine why Spokane police maintained the "Small Book" rule, and why they carried out this policy with regard to petitioner's requests. It is also not difficult to see why petitioner signed Exhibit 6. From his standpoint he had no alternative, for until he signed he could have no communication with the outside world.

An involuntary confession was defined in 1783 in *Warickshall's Case*, 1 Leach 263, 168 Eng. Rep. 234 (K. B. 1783) as one "forced from the mind by the flattery of hope, or by the torture of fear." Both factors are present in the instant case: (1) the hope of communication with the outside world, and (2) the fear of indefinite incommunicado detention until he "cooperated". As was found by this Court in *Ashcraft* v. *Tennessee*, 322 U. S. 143, 88 L. ed. 1192 (1944):

> "We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by the lone suspect against whom its full coercive force is brought to bear" (p. 154).

In *Spano* v. *New York*, 360 U. S. 315, 3 L. ed. 2d 1265, 79 S. Ct. 1202 (1959) this Court reversing a conviction based in part on an involuntary confession, stated:

> "The abhorrence of society to the use of involuntary confessions does not turn alone on this inherent untrustworthiness. It also turns on the deep rooted feeling that police must obey the law while enforcing the

law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves" (pp. 320-321).

The danger is even more evident in Spokane where the illegality is a part of the openly established police department "small book" procedures.

The effort to get the confession in writing came long after the police "knew" petitioner was guilty of the crime. They had ample evidence by the time they arrived at the police station, and certainly after petitioner had been identified in the line-up. But, as Judge Foster of the Court below states in his dissent:

> "The desire to wrap up the case with a confession was irresistible, and the unconstitutional course of conduct was pursued" (R. 166).

If in truth "ours is an accusatorial and not an inquisitorial system", it must be held that the introduction of Exhibit 6 in evidence, constituted a denial of a fair hearing and therefore of due process of law.

We do not submit this case solely on the basis of the denial of petitioner's request to phone counsel or his wife, nor solely upon the detention incommunicado nor solely on the police promise that petitioner could call his wife if he made a statement, nor solely upon the repeated interrogation in the absence of any advice as to the consequences of a statement or as to the right to remain silent. But the totality of these circumstances presents a picture of substantial pressure overbearing petitioner's free will. *Colombe* v. *Connecticut*, 367 U. S. 568, 6 L. ed. 2d 1037, 81 S. Ct. 1860 (1961); *Fikes* v. *Alabama*, 352 U. S. 191, 1 L. ed. 2d 246, 77 S. Ct. 281 (1957); *Reck* v. *Pate*, 367 U. S. 433,

6 L. ed. 2d 948, 81 S. Ct. 1541 (1961); *Rogers* v. *Richmond*, 365 U. S. 534, 5 L. ed. 2d 760, 81 S. Ct. 735 (1961).

It cannot seriously be maintained that the methods used by the police in this case are necessary to protect society from the threat of crime going undetected. The crime here involved had been detected, the suspects apprehended in the near vicinity of the crime within minutes of the commission of the crime, and the victim of the crime had identified petitioner positively. Up to this point the police behavior had been efficient, alert, intelligent, successful and completely within the Anglo-American accusatorial criminal framework. But then overzealousness goaded them into inquisitorial fields that were clearly unnecessary and way beyond the bounds of good police procedures. Due process requires that the fruits of these excesses be excluded from consideration at the time of trial.

III.

The Conviction Should Be Set Aside Even Though Other Evidence at the Trial Supported Petitioner's Guilt.

In the Brief in Opposition to the Petition for Writ of Certiorari, the state emphasized the fact that there was testimony that petitioner admitted his guilt shortly after his arrest and again upon being questioned at the police station on the same night, and that there was very positive identification of petitioner by the victim of the robbery. However, the reason in excluding an involuntary confession is not because of its unreliability or untruthfulness, but because the methods used offend our basic notions of a fair trial. *Rogers* v. *Richmond*, 365 U. S. 534, 5 L. ed. 2d 760, 81 S. Ct. 735 (1961); *Malinski* v. *New York*, 324 U. S. 401, 89 L. ed. 1029 (1945); *Spano* v. *New York*, 360 U. S. 315, 3 L. ed. 2d 1265, 79 S. Ct. 1202 (1959). This being so,

a conviction, based even in part upon a coerced confession, should be reversed without regard to the persuasiveness of the balance of the evidence.

In *Malinski* v. *New York*, 324 U. S. 401, 89 L. ed. 1029 (1945), this Court said:

> "And if it [the coerced confession] is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict" (p. 404).

In *Rogers* v. *Richmond*, 365 U. S. 534, 5 L. ed. 2d 760, 81 S. Ct. 735 (1961), this Court said:

> "Indeed, in many of the cases in which the command of the Due Process Clause has compelled us to reverse state convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed. Despite such verification, confessions were found to be the product of constitutionally impermissible methods in their inducement" (p. 541).

In the present trial, the importance of the written confession as contrasted to the oral confessions was that it went as an exhibit into the jury room, whereas the testimony as to oral confessions went there only in the memories of the jurors, and was subject to whatever doubts the jurors may have had as to the credibility or accuracy of the police witnesses. Exhibit 6 was an important part of the trial. We do not speculate as to whether the jury would have convicted petitioner in its absence. The conviction was infected with the illegality of police methods in obtaining Exhibit 6. It therefore was lacking in due process and should be reversed.

Conclusion

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the case remanded for a new trial with directions to exclude Exhibit 6 from the evidence if it is offered.

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